

TAX CODE

TITLE 2. STATE TAXATION

SUBTITLE B. ENFORCEMENT AND COLLECTION

CHAPTER 112. TAXPAYERS' SUITS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 112.001. TAXPAYERS' SUITS: JURISDICTION. The district courts of Travis County have exclusive, original jurisdiction of a taxpayer suit brought under this chapter. This section prevails over a provision of Chapter [25](#), Government Code, to the extent of any conflict.

Acts 1981, 67th Leg., p. 1512, ch. 389, Sec. 1, eff. Jan. 1, 1982. Amended by Acts 1989, 71st Leg., ch. 232, Sec. 3, eff. Sept. 1, 1989.

Sec. 112.002. INCLUSION OF PENALTY AND INTEREST. In this chapter, the terms "tax" and "fee" include an assessment, tax, or fee, and the penalty and interest computed by reference to the amount of the assessment, tax, or fee.

Added by Acts 1991, 72nd Leg., ch. 705, Sec. 7, eff. Sept. 1, 1991.

SUBCHAPTER B. SUIT AFTER PROTEST PAYMENT

The following section was amended by the 87th Legislature. Pending publication of the current statutes, see H.B. [2080](#), 87th Legislature, Regular Session, for amendments affecting the following section.

Sec. 112.051. PROTEST PAYMENT REQUIRED. (a) If a person who is required to pay a tax or fee imposed by this title or collected by the comptroller under any law, including a local tax collected by the comptroller, contends that the tax or fee is unlawful or that the public official charged with the duty of collecting the tax or fee may not legally demand or collect the tax or fee, the person shall pay the amount claimed by the state, and if the person intends to bring suit under this subchapter, the person must submit with the payment a protest.

(b) The protest must be in writing and must state fully and in detail each reason for recovering the payment.

(c) The protest payment must be made within the period of time set out in Subdivision (3) of Subsection (c) of Section [111.104](#) of this code for the filing of refund claims.

Acts 1981, 67th Leg., p. 1512, ch. 389, Sec. 1, eff. Jan. 1, 1982.

Amended by Acts 1983, 68th Leg., p. 460, ch. 94, Sec. 6, eff. May 10, 1983; Acts 1989, 71st Leg., ch. 232, Sec. 4, eff. Sept. 1, 1989.

The following section was amended by the 87th Legislature. Pending publication of the current statutes, see H.B. [2080](#), 87th Legislature, Regular Session, for amendments affecting the following section.

Sec. 112.052. TAXPAYER SUIT AFTER PAYMENT UNDER PROTEST.

(a) A person may bring suit against the state to recover an occupation, excise, gross receipts, franchise, license, or privilege tax or fee required to be paid to the state if the person has first paid the tax under protest as required by Section [112.051](#) of this code.

(b) A suit under this section must be brought before the 91st day after the date the protest payment was made, or the suit is barred, except that for the tax imposed by Chapter [171](#) for a regular annual period, if an extension is granted to the taxpayer under Section [171.202](#)(c) for filing the report and the taxpayer files the report on or before the last date of the extension period, the protest required by Section [112.051](#) may be filed with the report to cover the entire amount of tax paid for the period, and suit for the recovery of the entire amount of tax paid for the period may be filed before the 91st day after the date the report is filed. If the report is not filed on or before the last date of the extension period, a protest filed with the report applies only to the amount of tax, if any, paid when the report is filed.

(c) The state may bring a counterclaim in a suit brought under this section if the counterclaim relates to taxes or fees imposed under the same statute and during the same period as the taxes or fees that are the subject of the suit and if the counterclaim is filed not later than the 30th day before the date

set for trial on the merits of the suit. The state is not required to make an assessment of the taxes or fees subject to the counterclaim under any other statute, and the period of limitation applicable to an assessment of the taxes or fees does not apply to a counterclaim brought under this subsection.

(d) A taxpayer shall produce contemporaneous records and supporting documentation appropriate to the tax or fee for the transactions in question to substantiate and enable verification of a taxpayer's claim relating to the amount of the tax, penalty, or interest that has been assessed or collected or will be refunded, as required by Section [111.0041](#).

Acts 1981, 67th Leg., p. 1512, ch. 389, Sec. 1, eff. Jan. 1, 1982. Amended by Acts 1983, 68th Leg., p. 1373, ch. 283, Sec. 6, eff. Sept. 1, 1983; Acts 1989, 71st Leg., ch. 232, Sec. 5, eff. Sept. 1, 1989; Acts 1993, 73rd Leg., ch. 486, Sec. 7.01, eff. Sept. 1, 1993. Amended by:

Acts 2011, 82nd Leg., 1st C.S., Ch. 4 (S.B. [1](#)), Sec. 4.03, eff. October 1, 2011.

The following section was amended by the 87th Legislature. Pending publication of the current statutes, see H.B. [2080](#), 87th Legislature, Regular Session, for amendments affecting the following section.

Sec. 112.053. TAXPAYER SUIT: PARTIES; ISSUES. (a) A suit authorized by this subchapter must be brought against the public official charged with the duty of collecting the tax or fee, the comptroller, and the attorney general.

(b) The issues to be determined in the suit are limited to those arising from the reasons expressed in the written protest as originally filed.

(c) A copy of the written protest as originally filed must be attached to the original petition filed by the person paying the tax or fee with the court and to the copies of the original petition served on the comptroller, the attorney general, and the public official charged with the duty of collecting the tax or fee.

Acts 1981, 67th Leg., p. 1512, ch. 389, Sec. 1, eff. Jan. 1, 1982. Amended by Acts 1987, 70th Leg., ch. 89, Sec. 2, eff. Sept. 1, 1987;

Acts 1997, 75th Leg., ch. 1423, Sec. 19.05, eff. Sept. 1, 1997.

Sec. 112.054. TRIAL DE NOVO. The trial of the issues in a suit under this subchapter is de novo.

Acts 1981, 67th Leg., p. 1512, ch. 389, Sec. 1, eff. Jan. 1, 1982.

Sec. 112.055. CLASS ACTIONS. (a) In this section, a class action includes a suit brought under this subchapter by at least two persons who have paid taxes under protest as required by Section [112.051](#) of this code.

(b) In a class action, all taxpayers who are within the same class as the persons bringing the suit, who are represented in the class action, and who have paid taxes under protest as required by Section [112.051](#) of this code, are not required to file separate suits, but are entitled to and are governed by the decision rendered in the class action.

Acts 1981, 67th Leg., p. 1512, ch. 389, Sec. 1, eff. Jan. 1, 1982.

Sec. 112.056. ADDITIONAL PROTEST PAYMENTS BEFORE HEARING.

(a) A petitioner shall pay additional taxes when due under protest after the filing of a suit authorized by this subchapter and before the trial. The petitioner may amend the original petition to include all additional taxes paid under protest before five days before the day the suit is set for a hearing or may elect to file a separate suit. No such election shall prevent the court from exercising its power to consolidate or sever suits and claims under the Texas Rules of Civil Procedure.

(b) Repealed by Acts 1989, 71st Leg., ch. 232, Sec. 25(a), eff. Sept. 1, 1989.

(c) This section applies to additional taxes paid under protest only if a written protest is filed with the additional taxes and the protest states the same reason for contending the payment of taxes that was stated in the original protest.

Acts 1981, 67th Leg., p. 1513, ch. 389, Sec. 1, eff. Jan. 1, 1982.

Amended by Acts 1983, 68th Leg., p. 1374, ch. 283, Sec. 7, eff. Sept. 1, 1983; Acts 1989, 71st Leg., ch. 232, Sec. 25(a), eff. Sept. 1, 1989.

Sec. 112.057. PROTEST PAYMENTS DURING APPEAL. (a) If the state or the person who brought the suit appeals the judgment of a trial court in a suit authorized by this subchapter, the person who brought the suit shall continue to pay additional taxes under protest as the taxes become due during the appeal.

(b) Additional taxes that are paid under protest during the appeal of the suit shall be governed by the outcome of the suit without the necessity of the person filing an additional suit for the additional taxes.

Acts 1981, 67th Leg., p. 1513, ch. 389, Sec. 1, eff. Jan. 1, 1982.  
Amended by Acts 1989, 71st Leg., ch. 232, Sec. 6, eff. Sept. 1, 1989.

The following section was amended by the 87th Legislature. Pending publication of the current statutes, see H.B. [2080](#), 87th Legislature, Regular Session, for amendments affecting the following section.

Sec. 112.058. SUBMISSION OF PROTEST PAYMENTS TO COMPTROLLER. (a) Payments made under protest are to be handled as follows:

(1) An officer who receives payments made under protest as required by Section [112.051](#) shall each day send to the comptroller the payments, a list of the persons making the payments, and a written statement that the payments were made under protest.

(2) The comptroller shall, immediately on receipt, credit the payments to each fund to which the tax or fee paid under protest is allocated by law.

(3) The comptroller shall maintain detailed records of payments made under protest.

(4) A payment under protest bears pro rata interest. The pro rata interest is the amount of interest earned by the protested funds.

(b) Repealed by Acts 2003, 78th Leg., ch. 1310, Sec. 121(25).

(c) Repealed by Acts 2003, 78th Leg., ch. 1310, Sec.

121(25).

(d) All protest payments of the following taxes that become due during the fiscal biennium beginning September 1, 1987, may not be placed in a suspense account, but shall immediately be deposited to the credit of the fund or funds to which those taxes are allocated by law:

(1) taxes imposed under Chapter [151](#), [152](#), [154](#), [155](#), [156](#), 157, or [171](#) of this code;

(2) taxes imposed under Article 4.11A, Insurance Code;

(3) surtaxes imposed under Chapters [221](#), [222](#), [223](#), [225](#), and [226](#), Insurance Code; and

(4) taxes and fees paid under the provisions enacted by Article 9, H.B. No. 61, Acts of the 70th Legislature, 2nd Called Session, 1987.

(e) All protest payments of the taxes imposed under Chapters [151](#), [152](#), [154](#), [155](#), [156](#), 157, and [171](#) that become due during the fiscal biennium beginning September 1, 1989, may not be placed in a suspense account, but immediately shall be deposited to the credit of the fund or funds to which those taxes are allocated by law.

(f) All protest payments of taxes or of fees on prizes imposed by and collected for the state under Chapter [2001](#), Occupations Code, that become due on or after September 1, 1993, are governed by Subchapter [J](#), Chapter [403](#), Government Code.

Acts 1981, 67th Leg., p. 1513, ch. 389, Sec. 1, eff. Jan. 1, 1982. Amended by Acts 1985, 69th Leg., ch. 233, Sec. 1, eff. June 3, 1985; Acts 1987, 70th Leg., ch. 421, Sec. 1, eff. Aug. 31, 1987; Acts 1987, 70th Leg., 2nd C.S., ch. 5, art. 10, Sec. 1; Acts 1989, 71st Leg., ch. 232, Sec. 7, eff. Sept. 1, 1989; Acts 1991, 72nd Leg., ch. 641, Sec. 26, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 286, Sec. 25, eff. Sept. 1, 1993; Acts 1993, 73rd Leg., ch. 486, Sec. 7.02, eff. Sept. 1, 1993; Acts 1997, 75th Leg., ch. 1423, Sec. 19.06, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 1420, Sec. 14.836, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 1310, Sec. 92, 121(25), eff. Sept. 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 728 (H.B. [2018](#)), Sec. 11.161, eff. September 1, 2005.

The following section was amended by the 87th Legislature. Pending publication of the current statutes, see H.B. [2080](#), 87th Legislature, Regular Session, for amendments affecting the following section.

Sec. 112.059. DISPOSITION OF PROTEST PAYMENTS BELONGING TO THE STATE. If a suit authorized by this subchapter is not brought in the manner or within the time required or if the suit is properly filed and results in a final determination that a tax payment or a portion of a tax payment made under protest, including the pro rata amount of interest earned on the payment, belongs to the state, the comptroller shall ensure that the proper amount has been deposited to the credit of the appropriate state fund.

Acts 1981, 67th Leg., p. 1513, ch. 389, Sec. 1, eff. Jan. 1, 1982. Amended by Acts 1991, 72nd Leg., ch. 641, Sec. 27, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 486, Sec. 7.03, eff. Sept. 1, 1993; Acts 1997, 75th Leg., ch. 1423, Sec. 19.07, eff. Sept. 1, 1997.

The following section was amended by the 87th Legislature. Pending publication of the current statutes, see H.B. [2080](#), 87th Legislature, Regular Session, for amendments affecting the following section.

Sec. 112.060. CREDIT OR REFUND. (a) If a suit under this subchapter results in a final determination that all or part of the money paid under protest was unlawfully demanded by the public official and belongs to the taxpayer, the comptroller shall credit the proper amount, with the pro rata interest earned on that amount, against any other amount finally determined to be due to the state from the taxpayer according to information in the custody of the comptroller and shall refund the remainder by the issuance of a refund warrant.

(b) A refund warrant shall be written and signed by the comptroller.

(c) Each tax refund warrant shall be drawn against each fund to which the taxes paid under protest are allocated by law. If there are not sufficient funds in each fund to which the taxes paid under protest are allocated by law to pay a refund required to be

paid under Subsection (a) of this section, then the comptroller shall draw the warrant against the General Revenue Fund or other funds from which refund appropriations may be made, as the comptroller determines appropriate.

(d) The comptroller shall issue each tax refund warrant and shall deliver it to the person entitled to receive it.

(e) The comptroller may not refund an amount of tax to a taxpayer or person who collects taxes from another person unless the taxpayer or person refunds all the taxes to the person from whom the taxes were collected.

Acts 1981, 67th Leg., p. 1514, ch. 389, Sec. 1, eff. Jan. 1, 1982. Amended by Acts 1985, 69th Leg., ch. 233, Sec. 2, eff. June 3, 1985; Acts 1989, 71st Leg., ch. 232, Sec. 8, eff. Sept. 1, 1989; Acts 1993, 73rd Leg., ch. 486, Sec. 7.04, eff. Sept. 1, 1993; Acts 1997, 75th Leg., ch. 1040, Sec. 9, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1423, Sec. 19.08, eff. Sept. 1, 1997.

#### SUBCHAPTER C. INJUNCTIONS

The following section was amended by the 87th Legislature. Pending publication of the current statutes, see H.B. [2080](#), 87th Legislature, Regular Session, for amendments affecting the following section.

Sec. 112.101. REQUIREMENTS BEFORE INJUNCTION. (a) An action for a restraining order or injunction that prohibits the assessment or collection of a tax or fee imposed by this title or collected by the comptroller under any law, including a local tax collected by the comptroller, or a statutory penalty assessed for the failure to pay the tax or fee may not be brought against the public official charged with the duty of collecting the tax or fee or a representative of the public official unless the applicant for the order or injunction has first:

(1) filed with the attorney general not later than the fifth day before the date the action is filed a statement of the grounds on which the order or injunction is sought; and

(2) either:

(A) paid to the public official who collects the



tax or fee all taxes, fees, and penalties then due by the applicant to the state; or

(B) filed with the public official who collects the tax or fee a good and sufficient bond to guarantee the payment of the taxes, fees, and penalties in an amount equal to twice the amount of the taxes, fees, and penalties then due and that may reasonably be expected to become due during the period the order or injunction is in effect.

(b) The amount and terms of the bond and the sureties on the bond authorized by Subsection (a)(2)(B) must be approved by and acceptable to the judge of the court granting the order or injunction and the attorney general.

(c) The application for the restraining order or injunction must state under the oath of the applicant or the agent or attorney of the applicant that:

(1) the statement required by Subsection (a)(1) has been filed as provided by that subsection; and

(2) the payment of taxes, fees, and penalties has been made as provided by Subsection (a)(2)(A) or a bond has been approved and filed as provided by Subsection (a)(2)(B) and Subsection (b).

(d) The public official shall deliver a payment or bond required by Subsection (a)(2) to the comptroller. The comptroller shall deposit a payment made under Subsection (a)(2)(A) to the credit of each fund to which the tax, fee, or penalty is allocated by law. A payment made under Subsection (a)(2)(A) bears pro rata interest. The pro rata interest is the amount of interest that would be due if the amount had been placed into the suspense account of the comptroller.

Acts 1981, 67th Leg., p. 1514, ch. 389, Sec. 1, eff. Jan. 1, 1982. Amended by Acts 1989, 71st Leg., ch. 232, Sec. 9, eff. Sept. 1, 1989; Acts 1993, 73rd Leg., ch. 486, Sec. 7.05, eff. Sept. 1, 1993; Acts 1997, 75th Leg., ch. 1423, Sec. 19.09, eff. Sept. 1, 1997.

The following section was amended by the 87th Legislature. Pending publication of the current statutes, see H.B. [2080](#), 87th Legislature, Regular Session, for amendments affecting the following section.

Sec. 112.1011. NATURE OF ACTION FOR INJUNCTION. (a) A court may not issue a restraining order or consider the issuance of an injunction that prohibits the assessment or collection of an amount described by Section [112.101\(a\)](#) unless the applicant for the order or injunction demonstrates that:

(1) irreparable injury will result to the applicant if the order or injunction is not granted;

(2) no other adequate remedy is available to the applicant; and

(3) the applicant has a reasonable possibility of prevailing on the merits of the claim.

(b) If the court issues a temporary or permanent injunction, the court shall determine whether the amount the assessment or collection of which the applicant seeks to prohibit is due and owing to the state by the applicant.

Added by Acts 1989, 71st Leg., ch. 232, Sec. 10, eff. Sept. 1, 1989.

The following section was amended by the 87th Legislature. Pending publication of the current statutes, see H.B. [2080](#), 87th Legislature, Regular Session, for amendments affecting the following section.

Sec. 112.1012. COUNTERCLAIM. The state may bring a counterclaim in a suit for a temporary or permanent injunction brought under this subchapter if the counterclaim relates to taxes or fees imposed under the same statute and during the same period as the taxes or fees that are the subject of the suit and if the counterclaim is filed not later than the 30th day before the date set for trial on the merits of the application for a temporary or permanent injunction. The state is not required to make an assessment of the taxes or fees subject to the counterclaim under any other statute, and the period of limitation applicable to an assessment of the taxes or fees does not apply to a counterclaim brought under this section.

Added by Acts 1989, 71st Leg., ch. 232, Sec. 11, eff. Sept. 1, 1989.

The following section was amended by the 87th Legislature. Pending publication of the current statutes, see H.B. [2080](#), 87th

Legislature, Regular Session, for amendments affecting the following section.

Sec. 112.102. RECORDS AFTER INJUNCTION. (a) After the granting of a restraining order or injunction under this subchapter, the applicant shall make and keep records of all taxes accruing during the period that the order or injunction is effective.

(b) The records are open for inspection by the attorney general and the public officer authorized to enforce the collection of the tax to which the order or injunction applies during the period that the order or injunction is effective and for one year after the date that the order or injunction expires.

(c) The records must be adequate to determine the amount of all affected taxes or fees accruing during the period that the order or injunction is effective.

Acts 1981, 67th Leg., p. 1515, ch. 389, Sec. 1, eff. Jan. 1, 1982. Amended by Acts 1989, 71st Leg., ch. 232, Sec. 12, eff. Sept. 1, 1989.

The following section was amended by the 87th Legislature. Pending publication of the current statutes, see H.B. [2080](#), 87th Legislature, Regular Session, for amendments affecting the following section.

Sec. 112.103. REPORTS AFTER INJUNCTION. (a) On the first Monday of each month during the period that an order or injunction granted under this subchapter is effective, the applicant shall make and file a report with the state officer authorized to enforce the collection of the tax to which the order or injunction applies.

(b) The report must include the following monthly information:

(1) the amount of the tax accruing;

(2) a description of the total purchases, receipts, sales, and dispositions of all commodities, products, materials, articles, items, services, and transactions on which the tax is levied or by which the tax is measured;

(3) the name and address of each person to whom a commodity, product, material, or article is sold or distributed or

for whom a service is performed; and

(4) if payment of the tax is evidenced or measured by the sale or use of stamps or tickets, a complete record of all stamps or tickets used, sold, or handled.

(c) The report shall be made on a form prescribed by the state official with whom the report is required to be filed.

Acts 1981, 67th Leg., p. 1515, ch. 389, Sec. 1, eff. Jan. 1, 1982.  
Amended by Acts 1989, 71st Leg., ch. 232, Sec. 13, eff. Sept. 1, 1989.

The following section was amended by the 87th Legislature. Pending publication of the current statutes, see H.B. [2080](#), 87th Legislature, Regular Session, for amendments affecting the following section.

Sec. 112.104. ADDITIONAL PAYMENTS OR BOND. (a) If an applicant for an order or injunction granted under this subchapter has not filed a bond as required by Section [112.101](#)(a)(2)(B) of this code, the applicant shall pay to the comptroller all taxes, fees, and penalties to which the order or injunction applies as those taxes, fees, and penalties accrue and before they become delinquent. The comptroller shall credit the payment to each fund to which the tax, fee, or penalty is allocated by law.

(b) If the attorney general determines that the amount of a bond filed under this subchapter is insufficient to cover double the amount of taxes, fees, and penalties accruing after the restraining order or injunction is granted, the attorney general shall demand that the applicant file an additional bond.

Acts 1981, 67th Leg., p. 1515, ch. 389, Sec. 1, eff. Jan. 1, 1982.  
Amended by Acts 1989, 71st Leg., ch. 232, Sec. 14, eff. Sept. 1, 1989; Acts 1993, 73rd Leg., ch. 486, Sec. 7.06, eff. Sept. 1, 1993; Acts 1997, 75th Leg., ch. 1423, Sec. 19.10, eff. Sept. 1, 1997.

The following section was amended by the 87th Legislature. Pending publication of the current statutes, see H.B. [2080](#), 87th Legislature, Regular Session, for amendments affecting the following section.

Sec. 112.105. DISMISSAL OF INJUNCTION. (a) The attorney

general or the state official authorized to enforce the collection of a tax to which an order or injunction under this subchapter applies may file in the court that has granted the order or injunction an affidavit stating that the applicant has failed to comply with or has violated a provision of this subchapter.

(b) On the filing of an affidavit authorized by Subsection (a) of this section, the clerk of the court shall give notice to the applicant to appear before the court to show cause why the order or injunction should not be dismissed. The notice shall be served by the sheriff of the county where the applicant resides or by any other peace officer in the state.

(c) The date of the show-cause hearing, which shall be within five days of service of the notice or as soon as the court can hear it, shall be named in the notice.

(d) If the court finds that the applicant failed, at any time before the suit is finally disposed of by the court of last resort, to make and keep a record, file a report, file an additional bond on the demand of the attorney general, or pay additional taxes, fees, and penalties as required by this subchapter, the court shall dismiss the application and dissolve the order or injunction.

Acts 1981, 67th Leg., p. 1515, ch. 389, Sec. 1, eff. Jan. 1, 1982.

The following section was amended by the 87th Legislature. Pending publication of the current statutes, see H.B. [2080](#), 87th Legislature, Regular Session, for amendments affecting the following section.

Sec. 112.106. FINAL DISMISSAL OR DISSOLUTION OF INJUNCTION.

(a) If a restraining order or injunction is finally dismissed or dissolved, the comptroller shall:

(1) if a bond was filed, make demand on the applicant and the applicant's sureties for the immediate payment of all taxes, fees, and penalties due the state; or

(2) if no bond was filed, ensure that the proper amount of taxes, fees, and penalties has been deposited to the credit of the proper fund to which the taxes, fees, and penalties are allocated.

(b) Taxes, fees, and penalties that are secured by a bond

and remain unpaid after a demand for payment shall be recovered in a suit by the attorney general against the applicant and the applicant's sureties in a court of competent jurisdiction of Travis County or in any other court having jurisdiction of the suit.

Acts 1981, 67th Leg., p. 1516, ch. 389, Sec. 1, eff. Jan. 1, 1982. Amended by Acts 1993, 73rd Leg., ch. 486, Sec. 7.07, eff. Sept. 1, 1993; Acts 1997, 75th Leg., ch. 1423, Sec. 19.11, eff. Sept. 1, 1997.

The following section was amended by the 87th Legislature. Pending publication of the current statutes, see H.B. [2080](#), 87th Legislature, Regular Session, for amendments affecting the following section.

Sec. 112.107. CREDIT OR REFUND. If the final judgment in a suit under this subchapter maintains the right of the applicant for a temporary or permanent injunction to prevent the assessment or collection of the tax, the comptroller shall credit the money deposited under this subchapter, with the pro rata interest earned on the money, against any other amount finally determined to be due to the state from the applicant according to information in the custody of the comptroller and shall refund the remainder to the applicant.

Acts 1981, 67th Leg., p. 1516, ch. 389, Sec. 1, eff. Jan. 1, 1982. Amended by Acts 1989, 71st Leg., ch. 232, Sec. 15, eff. Sept. 1, 1989; Acts 1993, 73rd Leg., ch. 486, Sec. 7.08, eff. Sept. 1, 1993; Acts 1997, 75th Leg., ch. 1423, Sec. 19.12, eff. Sept. 1, 1997.

The following section was amended by the 87th Legislature. Pending publication of the current statutes, see H.B. [2080](#), 87th Legislature, Regular Session, for amendments affecting the following section.

Sec. 112.108. OTHER ACTIONS PROHIBITED. Except for a restraining order or injunction issued as provided by this subchapter, a court may not issue a restraining order, injunction, declaratory judgment, writ of mandamus or prohibition, order requiring the payment of taxes or fees into the registry or custody of the court, or other similar legal or equitable relief against the

state or a state agency relating to the applicability, assessment, collection, or constitutionality of a tax or fee covered by this subchapter or the amount of the tax or fee due, provided, however, that after filing an oath of inability to pay the tax, penalties, and interest due, a party may be excused from the requirement of prepayment of tax as a prerequisite to appeal if the court, after notice and hearing, finds that such prepayment would constitute an unreasonable restraint on the party's right of access to the courts. The court may grant such relief as may be reasonably required by the circumstances. A grant of declaratory relief against the state or a state agency shall not entitle the winning party to recover attorney fees.

Added by Acts 1989, 71st Leg., ch. 232, Sec. 16, eff. Sept. 1, 1989.  
Amended by Acts 1995, 74th Leg., ch. 579, Sec. 13, eff. Jan. 1, 1996.

#### SUBCHAPTER D. SUIT FOR TAX REFUND

The following section was amended by the 87th Legislature. Pending publication of the current statutes, see S.B. [903](#), 87th Legislature, Regular Session, for amendments affecting the following section.

Sec. 112.151. SUIT FOR REFUND. (a) A person may sue the comptroller to recover an amount of tax, penalty, or interest that has been the subject of a tax refund claim if the person has:

(1) filed a tax refund claim under Section [111.104](#) of this code;

(2) filed, as provided by Section [111.105](#) of this code, a motion for rehearing that has been denied by the comptroller; and

(3) paid any additional tax found due in a jeopardy or deficiency determination that applies to the tax liability period covered in the tax refund claim.

(b) The suit must be brought against both the comptroller and the attorney general and must be filed in a district court.

(c) The suit must be filed before the expiration of 30 days after the issue date of the denial of the motion for rehearing or it

is barred.

(d) The amount of the refund sought must be set out in the original petition. A copy of the motion for rehearing filed under Section [111.105](#) of this code must be attached to the original petition filed with the court and to the copies of the original petition served on the comptroller and the attorney general.

(e) A person may not intervene in the suit.

(f) A taxpayer shall produce contemporaneous records and supporting documentation appropriate to the tax or fee for the transactions in question to substantiate and enable verification of a taxpayer's claim relating to the amount of the tax, penalty, or interest that has been assessed or collected or will be refunded, as required by Section [111.0041](#).

Acts 1981, 67th Leg., p. 1516, ch. 389, Sec. 1, eff. Jan. 1, 1982.  
Amended by Acts 1987, 70th Leg., ch. 89, Sec. 3, eff. Sept. 1, 1987;  
Acts 1989, 71st Leg., ch. 232, Sec. 17, 25(a), eff. Sept. 1, 1989;  
Acts 1997, 75th Leg., ch. 1423, Sec. 19.128, eff. Sept. 1, 1997.

Amended by:

Acts 2011, 82nd Leg., 1st C.S., Ch. 4 (S.B. [1](#)), Sec. 4.04, eff. October 1, 2011.

Sec. 112.1512. COUNTERCLAIM. The state may bring a counterclaim in a suit brought under this subchapter if the counterclaim relates to taxes or fees imposed under the same statute and during the same period as the taxes or fees that are the subject of the suit and if the counterclaim is filed not later than the 30th day before the date set for trial on the merits of the suit. The state is not required to make an assessment of the taxes or fees subject to the counterclaim under any other statute, and the period of limitation applicable to an assessment of the taxes or fees does not apply to a counterclaim brought under this section.

Added by Acts 1989, 71st Leg., ch. 232, Sec. 18, eff. Sept. 1, 1989.

The following section was amended by the 87th Legislature. Pending publication of the current statutes, see S.B. [903](#), 87th Legislature, Regular Session, for amendments affecting the following section.



Sec. 112.152. ISSUES IN SUIT. (a) The grounds of error contained in the motion for rehearing are the only issues that may be raised in a suit under this subchapter.

(b) The suit applies only to a tax liability period considered in the comptroller's decision.

Acts 1981, 67th Leg., p. 1516, ch. 389, Sec. 1, eff. Jan. 1, 1982.

Sec. 112.153. ATTORNEY GENERAL TO REPRESENT COMPTROLLER. The attorney general shall represent the comptroller in a suit under this subchapter.

Acts 1981, 67th Leg., p. 1517, ch. 389, Sec. 1, eff. Jan. 1, 1982.

Sec. 112.154. TRIAL DE NOVO. In a suit under this subchapter, the issues shall be tried de novo as are other civil cases.

Acts 1981, 67th Leg., p. 1517, ch. 389, Sec. 1, eff. Jan. 1, 1982.

Sec. 112.155. JUDGMENT. (a) The amount of a judgment for the plaintiff shall be credited against any tax, penalty, or interest imposed by this title and due from the plaintiff.

(b) The remainder of the amount of a judgment not credited to a tax, penalty, or interest due shall be refunded to the plaintiff.

(c) The plaintiff is entitled to interest on the amount of tax included in a judgment for the plaintiff equal to the amount of interest that would be due if the tax had been deposited in the suspense account of the comptroller. The interest accrues beginning from the date that the tax was paid until:

(1) the date that the amount is credited against the plaintiff's tax liability; or

(2) a date determined by the comptroller that is not sooner than 10 days before the actual date on which a refund warrant is issued.

Acts 1981, 67th Leg., p. 1517, ch. 389, Sec. 1, eff. Jan. 1, 1982.

Amended by Acts 1989, 71st Leg., ch. 232, Sec. 19, eff. Sept. 1, 1989; Acts 1997, 75th Leg., ch. 1423, Sec. 19.13, eff. Sept. 1, 1997.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 470 (S.B. [757](#)), Sec. 6, eff.  
September 1, 2015.

Sec. 112.156. RES JUDICATA. The rule of res judicata applies in a suit under this subchapter only if the issues and the tax liability periods in controversy are the same as were decided in a previous final judgment entered in a Texas court of record in a suit between the same parties.

Acts 1981, 67th Leg., p. 1517, ch. 389, Sec. 1, eff. Jan. 1, 1982.